

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
No. 7:08-CR-73-D  
No. 7:15-CV-196-D

MARTIN BRYANT BOYETTE, )  
 )  
 Petitioner, )  
 )  
 v. )  
 )  
 UNITED STATES OF AMERICA, )  
 )  
 Respondent. )  
 )

**ORDER**

On September 3, 2015, Martin Bryant Boyette filed a motion to vacate, set aside, and correct his 156-month sentence. See [D.E. 62]. On March 3, 2016, Boyette filed an amended motion [D.E. 68]. On June 9, 2016, Boyette filed a memorandum in support [D.E. 70]. On July 13, 2016, the government responded and acknowledged that Boyette no longer has three predicate convictions to support his 156-month sentence. See [D.E. 71].

Boyette's motions [D.E. 62, 68] are GRANTED, and his 156-month sentence is VACATED. As part of Boyette's resentencing, the Probation Office will prepare a new Presentence Investigation Report ("PSR"). The resentencing will be scheduled after the Probation Office completes the new PSR. The new PSR shall include appropriate notice under Rule 32(h) of a possible upward departure under U.S.S.G. § 4A1.3. See Fed. R. Crim. P. 32(h); U.S.S.G. § 4A1.3.

SO ORDERED. This 19 day of July 2016.

  
JAMES C. DEVER III  
Chief United States District Judge